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11 BRANDREP, LLC

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 A1 ON TRACK SLIDING DOOR  
16 REPAIR AND INSTALLATION,  
17 INC, SYLVIA SCHICK, and  
18 DEBORAH SCHICK, individually  
19 and on behalf of all others similarly  
20 situated,

21 Plaintiffs,

22 vs.

23 BRANDREP, LLC, a Delaware  
24 limited liability company,

25 Defendant.

Case No. 3:21-CV-03013-SI

**BRANDREP, LLC'S REPLY TO  
OPPOSITION TO MOTION TO  
DISMISS FOR IMPROPER  
VENUE (FRCP 12(b)(3)) AND, IN  
THE ALTERNATIVE, MOTION  
TO TRANSFER VENUE (28  
U.S.C. § 1404)**

Date: November 12, 2021  
Time: 10:00 a.m.  
Courtroom: 1  
Judge: Hon. Susan Illston

First Amended Complaint Filed on  
April 29, 2021

**BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS  
FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE ALTERNATIVE,  
MOTION TO TRANSFER VENUE (28 U.S.C. § 1404)**

1 **A. Introduction**

2 Plaintiffs' opposition emphasizes its contacts with the Northern District, but  
3 it has only one serial plaintiff out of three residing there.<sup>1</sup> In contrast, defendant's  
4 entire operation is in the Central District, where it has many employees, possibly  
5 former employee witnesses, and records that will be the subject of the bulk of the  
6 discovery in this case.

7 Plaintiffs attempt to minimize the Central District's interest in regulating  
8 businesses within its District by arguing that the Northern District has an interest in  
9 protecting its citizens (from the alleged calls into the Northern District that  
10 allegedly violated the TCPA). However, none of the plaintiffs have given  
11 defendant its phone record, though defendant has requested it many times.  
12 Hutchinson Decl., ¶¶11-17. In any case, the focus of the putative class action is  
13 nationwide, where the Northern District is on equal footing with the rest of the  
14 country.

15  
16 **A. Plaintiffs' Characterization of Defendant's Motion is Inaccurate**

17 Plaintiffs argue that defendant's motion to transfer venue is "based  
18 exclusively on the location of its headquarters and employees." Opposition, p. 1,  
19 ln. 17. The assertion is completely inaccurate. Defendant also bases its motion on:  
20 1) only one out of three plaintiffs residing in the Northern District, 2) defendant  
21 having no employees or branch offices in the Northern District, 3) the failure of  
22 plaintiffs to give defendant their phone records showing actual contact in the  
23 Northern District, 4) the interest of the Central District to regulate businesses in its  
24

25  
26  
27 <sup>1</sup> See the Hutchinson Decl., ¶¶4, 9-23 for evidence that Sylvia Schick, Louis Floyd (aka A1 On Track Sliding Door  
28 Repair and Installation), and Maria Schaffer are serial plaintiffs. Ms. Schick and A1 On Track are plaintiffs herein.  
Maria Schaffer was a plaintiff in the original complaint but was apparently dropped for forum shopping reasons.  
Hutchinson Decl., ¶16.

district, 5) the putative TCPA class action weakening the weight of the plaintiffs' choice of forum, and 6) evidence of plaintiffs' forum shopping.

**B. Plaintiffs' Slippery Slope Argument Is Misleading Rhetoric**

Plaintiffs then go on to argue that "this argument, if accepted, would all but guarantee the transfer of every class action to a defendant's home forum regardless of where the defendant may have inflicted harm." Opposition, p. 1, ln. 17-19. Not only is this "slippery slope" argument based on a fallacy, but it is also misleading rhetoric.

Even if hypothetical, putative class action defendants solely based their motions to transfer venue on their location of headquarters and employees, the outcomes would vary based on each specific situation. Such hypothetical motions might hinge on: 1) the number and locations of the plaintiffs, 2) whether defendants had contacts in the original filing district, 3) the nature of the claims, 4) the quality and quantity of contacts in the respective districts. This Court, in its discretion, can rule based on its review of the *Jones* factors. *Jones v. GNC Franchising, Inc.*, 211 F.3d 496, 499 (9<sup>th</sup> Cir. 2000).<sup>2</sup>

**C. Plaintiffs' Contacts to the Northern District Are Weak**

As stated above, only two of the three plaintiffs reside in the Northern District. The alleged harm came in the form of one or two alleged phone calls to mobile phones, which could have been received anywhere. First Amended Complaint ("FAC"), ¶¶18, 22, 25. Plaintiffs haven't even given the defendant their

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<sup>2</sup> The court may consider factors such as: (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiffs' cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof. *Jones v. GNC Franchising, Inc.*, 211 F.3d 496, 499 (9<sup>th</sup> Cir. 2000).

1 phone records, though the defendant has requested it many times. Hutchinson  
2 Decl., ¶11-17. The quality of plaintiffs' contacts to the Northern District are weak.

3  
4 **D. Little or No Weight Should Be Given to the Plaintiffs' Choice of Forum**

5 Because plaintiffs have chosen to represent a class, their choice of forum is  
6 given less weight. *Lou v. Belzberg*, 834 F.2d 730, 739 (9<sup>th</sup> Cir. 1987); see also *Neff*  
7 *v. Tobin Dodge, LLC*, 2:20-cv-00261-JAM-DMC (E.D. Cal. Nov. 18, 2020); see  
8 also *LaGuardia v. Designer Brands, Inc.*, No. 19CV1568 JM(BLM), 2020 WL  
9 2463385, at \*8 (S.D. Cal. May 7, 2020) (noting that TCPA class actions are  
10 normally attorney driven and require limited participation from the named  
11 plaintiff).

12 Plaintiffs cite the *Roiling v. E\*Trade* case for the proposition that a  
13 plaintiff's choice of forum should only be given less weight if there is evidence of  
14 forum shopping. Opposition, p. 6, ln. 3-22; *Roling v. E\*Trade Sec., LLC*, 756 F.  
15 Supp. 2d 1179, 1185 (N.D. Cal. 2010). In that case, defendant E\*Trade had larger  
16 offices in the Northern District than in New York, where it wanted to transfer the  
17 case to. *Id.* at 1186. While evidence of forum shopping should not benefit a  
18 plaintiff's choice of venue, that does not mean it is a necessary condition of giving  
19 less weight to class action.<sup>3</sup>

20 That being said, defendant does have evidence of plaintiffs' forum shopping.  
21 "Where forum-shopping is evident, however, courts should disregard plaintiff's  
22 choice of forum." *Foster v. Nationwide Mut. Ins. Co.*, No. C 07-04928 SI, 2007

23  
24 <sup>3</sup> "In part, the reduced weight on plaintiff's choice of forum in class actions serves as a guard against the dangers of  
25 forum shopping ... ." *Id.* at 1185. (Emphasis added). This shows that it is only a part of the rationale for giving  
26 less weight to class-action plaintiffs' choice of forum.; the case cited in *E\*Trade* states this proposition in the  
27 affirmative: "Where forum-shopping is evident, however, courts should disregard plaintiff's choice of forum."  
28 *Foster v. Nationwide Mut. Ins. Co.*, No. C 07-04928 SI, 2007 WL 4410408, at \*2 (N.D. Cal. Dec. 14, 2007) (Illston,  
J.). See also *Shultz v. Hyatt Vacation Mktg. Corp.*, No. 10-CV-04568-LHK, 2011 WL 76735, at \*5 (N.D. Cal. Feb.  
28, 2011) "In a class action, this deference is somewhat tempered, however. A class action with potential class  
members all over the United States has been found to reduce the significance of the plaintiff's choice."

1 WL 4410408, at \*2 (N.D. Cal. Dec. 14, 2007) (Illston, J.). First, the plaintiffs are  
 2 serial plaintiffs who do not have phone bills to evidence their claims. Hutchinson  
 3 Decl., ¶¶4, 9-23.

4 Second, plaintiffs eliminated plaintiff Maria Schaeffer from the original  
 5 complaint, apparently because she lived in Huntington Beach (Central District).<sup>4</sup>  
 6 Complaint in case # 3:20-cv-05110-TSH in the Northern District of California, ¶10  
 7 (“Plaintiff Schaeffer is a natural person over the age of eighteen (18) and a resident  
 8 of the State of California; Schaeffer resides in **Huntington Beach, Orange**  
 9 **County.**”) (emphasis added); Hutchinson Decl., ¶¶9-16. This shows plaintiffs’  
 10 have engaged in forum shopping in this specific matter with a preference for the  
 11 Northern District.

12 Therefore, the plaintiffs’ choice of forum should carry no weight. Even if  
 13 the Court isn’t convinced by the evidence presented, plaintiffs’ choice of forum  
 14 should not weigh significantly against transfer.

15  
 16 **E. Plaintiffs’ Class Action, if Successful, Will Likely Create Numerous**  
 17 **Contacts within the Central District**

18 If Plaintiffs can certify their class, they will very likely add numerous  
 19 plaintiffs in the Los Angeles-Orange County metropolitan area and other areas  
 20 within the Central District. Having numerous plaintiffs in the Central District  
 21 would balance out the contacts between districts, thereby giving plaintiffs a strong  
 22 contact with the Central District. See *Shultz v. Hyatt Vacation Mktg. Corp.*, No.  
 23 10-CV-04568-LHK, 2011 WL 76735, at \*5 (N.D. Cal. Feb. 28, 2011) “In a class  
 24 action, this deference is somewhat tempered, however. A class action with  
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26 <sup>4</sup> Plaintiffs’ counsel, Taylor Smith and Rebecca Davis filed an identical TCPA complaint against Brandrep on  
 27 7/28/20 (Case # 3:20-cv-05110-TSH in the Northern District of California). The Plaintiffs were J. Scott Threde,  
 28 Louis Floyd, Sylvia Schick, and Maria Schafer.

1 potential class members all over the United States has been found to reduce the  
2 significance of the plaintiff's choice."

### 4 **F. Costs Weigh in Favor of the Central District**

5 The only cost advantage to having the case in the Northern District is the  
6 presence of plaintiff A1 On Track (i.e. serial plaintiff Louis Floyd).<sup>5 6</sup>

7 In contrast, all of defendant's employees, executives, and records are in the  
8 Central District. To the extent there are any outsourced, out-of-the-country  
9 services relevant to discovery, the source of information for such discovery would  
10 still be in the Central District.

### 12 **G. The Public Interest Weighs in Favor of the Central District**

13 The Central District has a local interest in adjudicating this claim because its  
14 citizens have a strong interest in adjudicating claims involving the local business.  
15 The Central District would want to ensure that business located in its district abide  
16 by federal laws and do not engage in unlawful telemarketing practices. See *Geraci*  
17 *v. Red Robin Int'l, Inc.*, No. 1:18-cv-15542-RMB, at \*5 (D. N.J. Jun. 21, 2019).

### 19 **H. Conclusion**

20 Therefore, Brandrep, LLC respectfully requests that the Court dismiss the  
21 first amended complaint pursuant to F.R.C.P. 12(b)(3) for improper venue.  
22 Alternatively, Brandrep, LLC respectfully requests that the Court, in the interests  
23 of justice and for the convenience of the parties, transfer this case to the Central  
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26 <sup>5</sup> Defendant agrees to have his deposition taken near his business or residence in the Northern District or  
27 electronically.

28 <sup>6</sup> Plaintiffs' active counsel in this case isn't even located in the Northern District.

1 District of California, Southern Division (Orange County) pursuant to 28 U.S.C. §  
2 1404.

3  
4 Dated: October 19, 2021

LEGAL SOLUTIONS 2 U  
A Professional Corporation

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6  
7 /s/ Patrick L. Blair  
Patrick L. Blair  
8 Attorney for Defendant  
9 Brandrep, LLC  
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**PROOF OF SERVICE**

COUNTY OF ORANGE )  
 ) ss.  
 STATE OF CALIFORNIA )

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 18201 Von Karman, Ste. 701, Irvine, California 92616.

On October 19, 2021, I served the following document described as:

**BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE (28 U.S.C. § 1404); HUTCHINSON DECLARATION IN SUPPORT OF BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE (28 U.S.C. § 1404)**

On the following interested parties in this action:

**Taylor T. Smith**  
**Via CM/ECF**  
*Attorney for plaintiffs*  
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**[X] VIA CM/ECF (email)** By electronic filing through the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on October 19, 2021 at Irvine, California.

/s/ Ron Kort  
 Ron Kort